

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-11576-DPW

PARTNERS HEALTHCARE  
SYSTEM, INC.,

**ORAL ARGUMENT  
SCHEDULED: May 3, 2006**

Defendant.

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**DEFENDANT PARTNERS HEALTHCARE SYSTEM, INC.'S  
ASSENTED-TO MOTION FOR LEAVE TO FILE SUR-REPLY IN FURTHER  
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendant Partners Healthcare System, Inc. (“Partners”), by its undersigned counsel, with the assent of plaintiff’s counsel, and pursuant to Local Rule 7.1(b)(3), hereby moves the Court for leave to file a sur-reply in response to Plaintiff United States’ reply brief of March 17, 2006 (the “Reply” or “Plaintiff’s Reply”). Partners requires a sur-reply in order to respond to Plaintiff’s new arguments and to correct certain factual inaccuracies contained in Plaintiff’s Reply.

As the Court knows from Partner’s February 24, 2006 Opposition brief, Plaintiff premised the first of two arguments in its original Motion on a legal position that Partners does not assert. After receiving Partner’s Opposition, Plaintiff realized it had not addressed Partners’ argument previously found in its amended interrogatory response No. 1<sup>1</sup> that the stipend payments at issue are noncompensatory scholarships and thus exempt from the definition of wages under IRC § 3121(a). On March 17, 2006, Plaintiff filed an assented-to motion for leave

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<sup>1</sup> Partners has attached its Amended Interrogatory Responses, among other relevant documents, to the Declaration of Mark H. Churchill, submitted concurrently with Partners’ sur-reply for the Court’s consideration.

and its Reply brief. Accordingly, Plaintiff's Reply constitutes the government's first explication of its legal position concerning Partners' theory – that Partners' resident stipends are scholarships or fellowships for training, and thereby exempt from FICA tax under Internal Revenue Code ("IRC") Section 3121(a).<sup>2</sup>

Partners requests the opportunity to respond by sur-reply brief and show that not only do Plaintiff's new arguments fail to disprove the existence of genuine issues of material fact in dispute concerning the tax exempt status of Partners' resident stipends under IRC Section 3121(a), but also that they mischaracterize the factual evidence submitted by the parties. By granting the instant motion for leave and accepting Partners' sur-reply, this Court will benefit from receiving a more complete discourse on Plaintiff's new arguments. As Plaintiff itself opined, this is a complex case, and Partners' brief will aid the court's understanding of some of these complexities. Moreover, equity will be served in this specific instance. Otherwise, Partners' lone opportunity to respond to Plaintiff's new arguments and factual inaccuracies – ordinarily afforded the non-movant through its opposition brief – will be limited to oral argument on Plaintiff's Motion.

Accordingly, Partners respectfully requests that this Court grant leave to Partners and accept for filing the accompanying sur-reply brief.

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<sup>2</sup> Partners does make a second argument related to the FICA tax status of its resident stipends programs – namely, that even if such stipends qualify as taxable "wages," they are exempt from FICA under the so-called "Student Exception" provided in IRC Section 3121(b)(10). However, Partners recognizes that additional argument of the Student Exception is not warranted in a sur-reply because the facts and law have been adequately briefed in Plaintiff's original brief (*see* Pl.'s Br. in Support of Its Mot. for Summ. J. at 6-24), Partners' Opposition (*see* Opposition at 8-25), and again in Plaintiffs' Reply (*see* Reply at 11-19).

	<p style="text-align: center;"><u>/s/ Mark H. Churchill</u></p> <p>BENJAMIN A. GOLDBERGER (No. 654357) JOSEPH H. SELBY (No. 643275, <i>admitted pro hac vice</i>) McDermott Will &amp; Emery LLP 28 State Street Boston, MA 02109 Telephone: (617) 535-4000/Facsimile: (617) 535-3800 E-Mail: <a href="mailto:bgoldberger@mwe.com">bgoldberger@mwe.com</a> <a href="mailto:jselby@mwe.com">jselby@mwe.com</a></p> <p>CHRISTOPHER KLEIFOTH (<i>admitted pro hac vice</i>) MARK H. CHURCHILL (No. 652578, <i>admitted pro hac vice</i>) McDermott Will &amp; Emery LLP 600 13<sup>th</sup> Street, N.W. Washington, DC 20005 Telephone: (202) 756-8000/Facsimile: (202) 756-8087 E-Mail: <a href="mailto:ckleifoth@mwe.com">ckleifoth@mwe.com</a> <a href="mailto:mchurchill@mwe.com">mchurchill@mwe.com</a></p> <p style="text-align: center;"><i>Attorneys for Partners Healthcare System, Inc.</i></p>
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#### **RULE 7.1 CERTIFICATION**

I, Mark H. Churchill, hereby certify that I have conferred with counsel for plaintiff, Stephen T. Lyons, regarding the subject matter of this motion and counsel has assented to the relief requested herein.

/s/ Mark H. Churchill

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing, and paper copies will be sent to those indicated as non-registered participants on April 12, 2006.

/s/ Mark H. Churchill  
Mark H. Churchill